even on the brief details given in *Kemp and Kemp* it was clearly a much more serious case; the injuries were much greater and their results worse, and the pain and suffering must have been of a much higher degree.

More to the point, in my view, are the cases mentioned in Chapter 7 of the same volume, which chapter is concerned only with pain, suffering and shock. In *Brown* v. *Moorehouse Bros. Ltd.*[2] (p. 694) the plaintiff received £75 general damages. In *Jones* v. *Shaw Savill and Albion Co., Ltd.*[3] (p. 693) £80. In *Rigby* v. *St. Helens District Industrial Co-operative Society, Ltd.*[4] (p. 693) £120. In all these cases it seem clear that the pain and suffering must have been of a much higher degree than the plaintiff suffered in the instant case. In the case of *Brown* v. *Moorehouse Bros. Ltd.*, a girl aged 11 was hit by a lorry and dragged along the road for some yards. She received abrasions, suffered shock and was in bed for 4 weeks. The abrasions became septic, requiring further treatment, and she was in a nervous condition for six months afterwards. There was also a scar 3½ by 2 inches on her upper thigh. Yet she received only £75, less than $650.

I do not think this is a case for heavy exemplary or punitive damages, because the defendant was certainly under a great mental strain at the time, to which condition the plaintiff did (however little or unintentionally) by her conduct contribute. However, this was a vicious attack, and the defendant should not have so resorted to violence. I am therefore going to award somewhat more than I otherwise would have done. I award the plaintiff $450 general damages.

The total of damages awarded is therefore $490.50.

Coming to costs, Order 65 r. 12B of the Rules of the Supreme Court reads as follows:—

"12B. — If any suit is brought in the High Court, which would have been within the jurisdiction of a Subordinate Court, or in which the plaintiff recovers a sum for which judgment could have been recovered in the Subordinate Court, the plaintiff shall not be entitled to any more costs than he would have been entitled to if the proceedings had been brought in the Subordinate Court, unless in any such suit a Judge certifies that there was sufficient reason for bringing the suit in the High Court".

Judgment could have been given for $490.50 in a 2nd class Magistrate's Court, and I am not going to give any such certificate as is referred to in the rule. Even if there were no such rule, I should have allowed only light costs, and I propose to fix this amount under the general discretion of the court as to costs. I award the plaintiff $250 in costs.

Judgment for the plaintiff.

KONG YII TAI v. PUBLIC PROSECUTOR

[A.Cr.J. (McGilligan J.) December 17, 1963]

[Sibu — High Court Criminal Appeal No. 15 of 1963]

Firearms and Ammunition — Surrender order — Order made for security reason — Failure to surrender — Time of semi-emergency — Sentence — Preservation of Public Security Regulations, 1962, regs. 27 and 39.

Criminal Procedure — Sentence — When to be reduced or set aside.

The appellant was convicted on charges of possession of a shotgun and ammunition contrary to the Preservation of Public Security Regulations, 1962, and was sentenced to 6 months imprisonment. On appeal against sentence,

Held: in this case as the sentence was appropriate, fitting to circumstances of the crime, and not manifestly excessive, it should not be set aside.

CRIMINAL APPEAL.

Appellant in person.

J. W. Williams (Deputy Public Prosecutor) for the respondent.

McGilligan J.: The appellant was convicted on September 10, 1963 on the two following charges —

"That you, on or about the 7th day of September, 1963, at 2140 hours, at Sungei Durin, Sibu, being a person, other than a native, had in your possession one firearm, to wit, Iver Johnson single barrel breach loading shotgun, number G-4918, contrary to the provisions of the Surrender of Firearms and Ammunition Order, 1963, made under the provisions of regulation 27 of the Preservation of Public Security Regulations, 1962, and you thereby committed an offence punishable under regulation 39 of the said regulations.

That you, on or about the 7th day of September, 1963, at about 2140 hours, at Sungei Durin, Sibu, being a person other than a native, had in your possession seven shotgun cartridges, contrary to the provisions of the Surrender of Firearms and Ammunition Order, 1963, made under the provisions of regulation 27 of the Preservation of Public Security Regulations, 1962, and you thereby committed an offence punishable under regulation 39 of the said regulations."

He was sentenced to 6 months on each charge, the sentences to run concurrently.

The appellant has appealed on the following grounds:—

"2. Your petitioner is dissatisfied with the said judgment on the grounds following:—

(a) That the magistrate of the court below erred in coming to the conclusion that your petitioner knew perfectly well of the notice to surrender firearms and ammunitions. From the evidence given it is clear that —

(i) when the notice to call for surrender of arms and ammunitions was made, your petitioner was at Kanowit;

(ii) it was your petitioner who admitted the possession of the firearms and ammunitions; and

(iii) your petitioner was of opinion that the firearms licence was issued at Kanowit and it was not necessary to surrender his shotgun.

Evidently the notice was not clearly understood by your petitioner who is an ordinary person. As such your petitioner had no intention at all to commit the offence or had the knowledge that he had committed the offence.

The sentence is therefore against the weight of evidence.

(b) That your petitioner has one wife and 3 children aged 5, 6, and 8 years old respectively to support and maintain. The imprisonment sentence would cause greatest hardship and difficulty to the family of your petitioner.

3. Your petitioner prays that the imprisonment sentence may be reduced to a small fine."

In addressing the court during the hearing of the appeal the appellant said he was appealing only against the sentences, not the convictions. In any event, the convictions clearly must stand. The government's order was to surrender all firearms and ammunition; the appellant's failure to surrender his shotgun and cartridges was his offence, a crime regardless of his state of mind at the time. The question of whether there was guilty knowledge or intention does not arise, is irrelevant in considering whether or not the offences charged had been committed.

It is very clear from the appellant's own evidence in the court below that he did at the relevant times know of the surrender order, which he calls a notice. It is also clear that he lives most of the time in Durin, Sibu District, and not in Kanowit, though he owns land in both places. The gun and ammunition were found in his possession in Durin five months after the surrender order was made. The court is satisfied that the appellant must have known (as the learned trial magistrate found) very well what the surrender order meant — that all nonnatives in the Sibu area and the other areas named must at once hand in their gun and ammunition. The appellant's concealment of the shotgun in his wife's bed supports this finding. He did tell the police of the shotgun, but that was after the seven cartridges had been found in his trousers. The court holds that the appellant knew that his possession of the shotgun and ammunition, and failure to surrender them, was wrong, a crime which he chose to commit for his own reasons.

There is no evidence to show that his reasons were particularly bad or treasonable ones; the appellant may indeed have kept the shotgun just to use on his farm in Kanowit though even about that there must be some doubt.

In any event he chose to flout the clear order of the government, an order made for security reasons, for the public safety, and made on dangerous times. The appellant will have to bear the consequences of what he was so foolish and reckless (if that is all he was) as to do.

I take into account what the learned deputy public prosecutor fairly said about this being a case in which there might have more properly been only one charge, taking in both the gun and the ammunition. I agree that one charge would be preferable, but I do not consider two necessarily wrong. In any case it was ordered that the sentence imposed should run concurrently. I have sympathy for the appellant's wife and children, but, (as the court often has to say in criminal cases) it is before, not after, the criminal act has been committed that wife and children should be thought of.

This court will only reduce or set aside a sentence if it considers it inappropriate, not fitting to circumstances of the crime, or if it considers it manifestly excessive. The maximum penalty for this crime is three years imprisonment, it was an offence against regulations for the preservation of public security committed at a time of semi-emergency; an offence the subject of which was a shotgun and ammunition; the surrender order was made because of the government's urgent desire to bring under its control all the shotguns and ammunition to which it referred. The court cannot say that in the circumstances a total sentence of six months is inappropriate, or manifestly excessive; nor is there anything wrong in principle on this sentence.

This appeal is dismissed. The appellant is now to serve the sentence imposed, a total of six months to run from to-day.

Appeal dismissed.

GORE v. GORE

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) & Wylie C.J. (Borneo)) January 6, 1964]

[K.L. — Federal Court Civil Appeal No. 20 of 1963]

Contract — Husband and wife mutually consenting to live apart — Agreement to pay maintenance to wife and children — Mutual consent ceasing to exist — Children self-supporting — Whether agreement frustrated.

Practice & Procedure — Scope of O. 32 r. 6 — Not applicable when there is serious question of law.

On September 14, 1959, the plaintiff and defendant, who were husband and wife, entered into a written agreement, when they were about to live apart by mutual consent, by which the husband agreed to pay monthly sums by way of maintenance to the wife and their three children, none of whom were able to contribute to their own support. The agreement was executed in Singapore.

On March 4, 1963 the wife commenced proceedings to recover $3,000 being arrears of maintenance. The husband filed a defence in which he contended that the agreement was no longer enforceable on the grounds: (a) it was entered into to provide for the maintenance of the wife and children while the parties were living apart by mutual consent and that the husband afterwards ceased to consent to his wife living apart from him and (b) the agreement was to provide for the maintenance of the wife and children but one or more of the children were now gainfully employed and no longer in need of maintenance.

The wife then took out a summons for judgment under O. 32 r. 6. The learned judge gave judgment in favour of the wife ([1963] M.L.J. 343). On appeal,

Held: (1) the case was not a suitable one to be dealt with under O. 32 r. 6 as it involved a serious question of law;